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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 931

THE FRANKLIN LIFE INSURANCE COMPANY,
Petitioner,

vs.

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

WARREN W. GRIMES,
Counsel for Petitioner.

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Petitioner, The Franklin Life Insurance Company, by its undersigned attorney, respectfully prays for a writ of certiorari to the Court of Claims of the United States, to review the judgment of that Court entered in the above cause March 3, 1941 (R. 14).

Nature of Controversy.

The first case to test the validity of the Federal documentary transfer tax as applied to deposits of securities with a State by an insurance company, under State statutes enacted for the regulation of such companies chartered by the State.

Statutes and Regulations Involved.

The statutes and regulations involved appear in the Appendix hereto, *infra,* page 20.

Statement of Facts.

Petitioner is an Illinois corporation engaged in the making and selling of insurance, including life, accident, health and endowment risks, in Illinois and other States (R. 4-5, par. 1). Under Illinois statutes (Appendix., p. 23) and during the period July 1, 1899, to June 30, 1937, when it was discontinued (R. 5, par. 2) procedure was established for the registration of life policies by the State Director of Insurance. Any company issuing registered policies was required to deposit approved securities with the Director "for the common benefit of all the holders of its registered policies and annuity bonds" (Append., p. 24) and to maintain its deposits in an amount equal to the reserve required to cover such policies. After discontinuance of registration on June 30, 1937, it was still required to maintain such deposits to cover registered policies remaining in force (R. 5).

The registration was evidenced by the following required certificate signed and sealed by the Director and on the fact of the policy:

> This policy is registered; and approved securities, equal in value to the legal reserve thereon, are held in trust by this department (R. 5).

On failure of a company to maintain the required deposits, after sixty days notice by the Director, the company shall be deemed insolvent and proceeded against under special statutes (R. 6).

During the period of deposit, all securities are and must be included among the company assets on balance sheets

and Annual Statements required to be filed with the State. No authority exists in the Director of Insurance or any other department or agency of the State, by statute, agreement or otherwise, to dispose of such deposited securities except back to the depositing company; except upon insolvency, procedure for which is provided by special statutes on liquidation, dissolution or rehabilitation of insurance companies (R. 6, par. 6).

During the period of deposit, depositing companies have the right to withdraw any security or to substitute others of equal value and character in their stead, subject only to the maintenance of the required balance; and so long as the depositing company is solvent and keeps up its deposits, it may collect as its own the interest, coupons, and other income on the securities deposited as the same accrues. In practice, the Company calls for and receives from the Director of Insurance, in advance of maturity dates, any interest-bearing coupons about to mature (R. 6, par. 7).

Petitioner sold registered policies and from time to time both deposited with and withdrew securities from the Director of Insurance under the statutes referred to (R. 6, par. 8).

As to unregistered bonds so deposited, the petitioner used a legend stamped across the face of the bond as follows:

> This (bond) is the property of and deposited by the The Franklin Life Insurance Company, of Springfield, Illinois, with the Director of Insurance of the State of Illinois, and held by him in trust for the benefit and security of the members, policy holders, or creditors of the said The Franklin Life Insurance Company, as required by and pursuant to the laws of the State of Illinois. It is not negotiable or transferable until withdrawn from said trust, at which time it shall be endorsed by the Director of Insurance.

The form or endorsement used by the Director of Insurance is by rubber stamp and as follows:

> Withdrawn from above trust this — day of ——, A. D. 19—. Without recourse on me.
>
> —— ——,
> *as Director of Insurance*
> *of the State of Illinois.*
>
> Acknowledged before me this — day of ——, 19—.
>
> —— ——,
> *Notary Public.*
>
> My commission expires —— —, —— (R. 7).

Prior to October, 1939, neither the petitioner nor the State purchased or used Federal documentary transfer stamps under Schedule A-9 of Title VIII of the Revenue Act of 1926 as added by Section 724 (a) of the Revenue Act of 1932 (R. 7).

On October 2, 1939, the Collector of Internal Revenue at Springfield, Illinois, required the petitioner to purchase, and petitioner did purchase from him and cancelled, such documentary stamps to cover such bond deposits and withdrawals, beginning January 14, 1936, and ending August 8, 1939; the deposits amounting to a total of $5,443,000 and the withdrawals amounting to $1,162,000; the said stamps amounting to $2,177.20 and $564.80 on the respective sums, or a total in stamps of $2,742.00 (R. 7).

Under date of November 3, 1939, the petitioner filed with said collector a claim for refund of the said amount $2,742.00. The grounds relied upon in said claim were:

> (a) Neither the deposits of the securities with the State Insurance Department nor their return to the taxpayer constituted a transfer or delivery as contemplated by Schedule A-9 of Title VIII of the revenue act of 1926 as added by section 724 (a) of the revenue act of 1932; and

(b) Congress has no power to impose such a tax on transactions in which a State must always be one of the parties under the circumstances in this case (R. 7-8).

On November 20, 1939, the Commissioner of Internal Revenue rejected the claim (R. 8). On January 8, 1940, petitioner filed suit in the Court of Claims of the United States, upon the grounds recited in the claim (R. 1). That court made special findings of facts upon stipulation of the parties and, on March 3, 1941, dismissed the petition and entered judgment for the United States (R. 14). The present petition is directed toward review of that decision.

Specification of Errors.

1. The Court of Claims erred in holding that the exercise of State police powers does not include requiring security deposits with the State as a condition to doing business in a certain form within the State.

2. The Court of Claims erred in finding that a State governmental function was not involved because of the "election" of petitioner to engage in a certain form of business.

3. The Court of Claims erred in finding that the State statutes did not require the deposits covered by this case.

4. The Court of Claims erred in holding that, because the tax was not passed on to the State, there was no direct burden upon the State.

5. The Court of Claims erred in failing to find that the deposit of securities was the "means" or "instrumentality" employed by Illinois in the exercise of a governmental function, and therefore exempt.

6. The Court of Claims erred in considering that because these deposits are not within the statutory exemptions, they were subject to Federal taxation.

7. The Court of Claims erred in approving an administrative regulation which on its face extends the statute by punctuation and in violation of the expressed legislative intent.

Reasons Relied Upon.

1. The Court of Claims has decided an important question of Federal law which has not been, but should be, settled by this Court; in that the decision is the first to deal with Federal documentary transfer taxes applying to security deposits with States, required by State laws regulating insurance companies. It affects every insurance company doing business. The decision itself states that (as to constitutionality) "a difficult and somewhat doubtful question is thus raised".

2. The Court of Claims has decided a Federal question in a way probably in conflict with applicable decisions of this Court, in particular *Ambrosini* v. *U. S.*, 187 U. S. 1, 47 L. Ed. 49; *Federal Land Bank* v. *Crosland,* 261 U. S. 374, 67 L. Ed. 703; *Metcalf* v. *Mitchell,* 269 U. S. 253, 70 L. Ed. 392; *Indian Motorcycle Co.* v. *U. S.*, 283 U. S. 570, 75 L. Ed. 1277; and *Pittman* v. *Home Owners Loan Corp.,* 308 U. S. 21, 84 L. Ed. 11; in that it holds the Federal tax may constitutionally be applied to transactions exclusively with a State exercising a strictly governmental function under its police powers. It attempts to decide only under *Helvering* v. *Gerhardt,* 304 U. S. 405, 82 L. Ed. 1427, which it specifically states "does not directly decide the question", and spells certain rules from that case none of which it admits was applied to the present state of affairs.

3. The Court of Claims has decided an important question of General Law in a way probably untenable or in

conflict with the weight of authority, in that its decision discards a fundamental principle of Corporation Law that in purely regulatory matters involving qualification the creating State has exclusive jurisdiction. As applied to insurance companies the decision is in conflict with *German Alliance Insurance Co.* v. *Lewis,* 233 U. S. 389, 58 L. Ed. 1011; and *National Union Fire Insurance Co.* v. *Wanberg,* 260 U. S. 71, 67 L. Ed. 136.

4. The Court of Claims decision has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, in that it has approved the practice of administrative regulations altering by punctuation a statute in order to extend the scope beyond the legislative intent.

5. The decision of the Court of Claims is in conflict with that of the Circuit Court of Appeals for the Ninth Circuit in *U. S.* v. *Merchants National Trust & Savings Bank,* 101 F. (2d) 399, in disregarding the transactions as "transfers by operation of law" and therefore specifically excepted from the tax by the Regulations.

WHEREFORE, your petitioner prays that a writ of certiorari issue to the Court of Claims of the United States, commanding said court to certify and send to this Court on a day to be determined a full and complete transcript of the record of all the proceedings of the Court of Claims in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Court of Claims be reversed; and that the petitioner be granted such other and further relief as may seem proper.

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BRIEF IN SUPPORT OF PETITION.

Opinion Below.

The opinion of the Court of Claims has not been officially reported but may be found at page 8 of the Record.

Jurisdiction.

The judgment of the Court of Claims was entered on March 3, 1941 (R. 14). The jurisdiction of this Court is invoked under Section 3, c. 229 of the Act of February 13, 1925; 43 Stat. 939 (U. S. Code, Title 28, Section 288).

Statement.

The facts are set forth in the petition.

Statutes and Regulations Involved.

The statutes and regulations involved are set forth in full in the appendix, *infra*, page 17.

1. The Court of Claims erred in holding that the exercise of State police power does not include requiring security deposits with the State as a condition to doing business in a certain form within the State.

The regulation of insurance companies is the exercise of the State police power, also a State Governmental function since the State is the creator of the corporation. *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 369, 59 L. Ed. 1011; *National Union Fire Insurance Co.* v. *Wanberg*, 260 U. S. 71, 67 L. Ed. 136. This Court will notice judicially the common practice among States in requiring State deposits by insurance companies, but for lists see 32 *Corpus Juris*, Sec. 18, p. 988, footnotes.

The Court of Claims opinion recognizes

> "There is no doubt that any state of the Union has the right under its police powers to regulate and control the issuance of insurance policies in such manner as to protect the interests of the policyholders" (R. 12).

The Illinois statute immediately involved (Sec. 1, Act of April 18, 1899) specifically States that the deposits involved here are to be held by the State

> "* * * for the common benefit of all the holders of its registered policies and annuity bonds * * *" (Appen., p. 20).

Yet the court below holds the deposits outside its own statement of the rule.

The State established a procedure under which it would register policies provided always that as long as such policies were in force—even after registration was discontinued, the company would maintain deposits with the State. If the company did not comply as to deposits, it could not sell registered policies. Once it adopted that form of doing business, the State statute shows that the deposits were required. Sec. 3, Act of April 18, 1899; Secs. 247 and 250, Act of June 29, 1937; Illinois Insurance Code, Art. XV. The record below shows (R. 7, par. 10) that certain of the deposits here were made after registration had been discontinued; therefore they clearly were compulsory under Sec. 250 of the Act of June 29, 1937 (Appen., p. 24).

The court below states that the constitutional question raised is "difficult and somewhat doubtful" (R. 11). The determination affects all corporations and individuals whose business is under State control, yet the Court of Claims dismisses the issue with a solitary citation—*Helvering* v. *Gerhardt,* 304 U. S. 405, 82 L. Ed. 1427, an income rather than excise tax case. The court below admits that *Gerhardt* "does not directly decide the question now presented". It

then states the two rules therein—the one excluding from the immunity "activities thought not to be essential to the preservation of state governments" which it summarily dismisses without further comment, other than that the tax was not paid from the State treasury. Thereupon, it admits again that "none of the rules laid down" by *Gerhardt* "was applied to a state of affairs exactly similar to that in the case before us" (R. 11-12).

No other judicial basis whatever is given for the lower court's conclusion.

The first decision of this Court upon which petitioner relied (*Ambrosini* v. *U. S.*, 187 U. S. 1, 47 L. Ed. 49) is passed over with the statement it has no application and that the facts were quite different, but the court did not make any distinction. In *Ambrosini* there was an "election" as to doing business and no tax was passed on to the State—yet the court below bases its decision on these two facts.

The court below also fails even to mention two decisions of this Court relied upon by petitioner and directly controlling, viz: *Federal Land Bank* v. *Crosland,* 261 U. S. 374, 67 L. Ed. 703; and *Pittman* v. *Home Owners Loan Corp.,* 269 U. S. 253, 70 L. Ed. 392—in both of which the same reasoning, relied upon by petitioner here, was relied upon successfully by the Federal Government. Under the doctrine of "equality" of immunity recognized by this Court in *Metcalf* v. *Mitchell,* 269 U. S. 253, 70 L. Ed. 392, reiterated in *Indian Motocycle Co.* v. *U. S.,* 283 U. S. 570, 75 L. Ed. 1277, these two decisions are pointedly applicable. See also *U. S.* v. *Owens,* 100 Fed. 70.

2. The Court of Claims erred in finding that a State governmental function was not involved because of the "Election" of petitioner to engage in a certain form of business.

Ambrosini (*supra*) "elected" to go into the liquor business. He was not compelled to do so, but having so elected

he was subject to the requirements of the State law as to bond. The individuals involved in *Federal Land Bank* and *Pittman* v. *Home Owners Loan Corp.* (*supra*), "elected" to borrow through Federal agencies.

Insurance companies are not under compulsion to write certain forms or to do business in Illinois, but once the election is made the law imposes certain conditions—as when one elects to marry, to own a dog or become a banker. The conditions imposed by the State here were that these deposits be made. It is the satisfaction of these conditions rather than the "election" which the court below overlooks. The "election" amounts to nothing if the conditions are not satisfied. This is the unmistakable reasoning of this Court in *Ambrosini, Federal Land Bank* and *Pittman, supra.* There was no compulsion to become a notary public in *Warwick* v. *Bettman,* 102 Fed. 127, but this documentary tax (1898) was held illegal as to a bond to qualify a notary.

An Illinois life insurance company "elects" to write health and accident risks. There is no compulsion. But to do so it must make special deposits independent of those involved here. Sec. 4, Act of June 21, 1919.

3. The Court of Claims erred in finding that the State statutes did not require the deposits.

The Illinois insurance statutes, read together, show that special deposits were required as conditions for issuing various forms of policies and that "registered" policies were but one of these forms. *Accident and health,* Sec. 4, Act of June 21, 1919; *Assessment Life Companies,* Sec. 15, Act of July 14, 1927; all *Foreign Insurance Companies,* Sec. 1 of Act of June 18, 1883, as amended June 30, 1925; *all insurance companies of other States,* Sec. 16, Act of March 26, 1869; *Burial Insurance Companies,* Sec. 3b, Act of June 10, 1911; *Casualty Companies,* Sec. 3, Act of April 21, 1899, as amended June 30, 1919; *Fidelity and Surety,* Sec. 4, Act

of June 29, 1915. If the deposits were not made, the forms could not legally be used.

The court below erroneously concluded the deposits here involved were required only of Illinois companies, and to give them some advantage over companies of other states. There was nothing whatever in the record to support that finding. Even if true, this would not determine the question, and the court states it would not be controlling (R. 11).

4. The Court of Claims erred in holding that because the tax was not passed on to the State, there was no direct burden upon the State.

The State bore no burden of the tax paid by *Ambrosini* (*supra*) to his bonding company. In the *Pittman* case, *supra,* this Court reiterated that it was immaterial who paid the tax. The State bore none of the tax on notarial certificates in *Stirneman* v. *Smith, et al.,* (CCA-8) 100 Fed. 600, where this same documentary tax under its 1898 enactment was held illegal. The State bore no burden of the tax on the qualifying bond for a notary in *Warwick* v. *Bettman, supra.*

The Court below fails to see that when this Court, in *Helvering* v. *Gerhardt, supra,* and other cases refused to extend the immunity doctrine to give "private persons" an advantage in ordinary or "commercial" transactions, it did not mean that the rules in *Gerhardt* control, where, as here, no advantage exists or is claimed.

This Court specifically stated in the *Gerhardt* case that its decision rested upon a reason different from that in *Indian Motocycle Co.* v. *U. S., supra.* The effort of salaried officers to avoid their share of a tax imposed on persons generally has no similarity to an enforced transaction

with a State engaged in the regulation of its corporations. When the petitioner *transfers* its securities on sale or redemption, it pays its full share of tax. Under the decision below its transfer tax is multiplied several times although there has been no transfer.

5. The Court of Claims erred in failing to find that the deposit of securities was the "Means" or "Instrumentality" employed by Illinois in the exercise of a Governmental function, and therefore exempt.

In the *Federal Land Bank* case, *supra,* this Court held that the mortgage deed itself, rather than the bank, was the "instrumentality" and prohibited the tax on the mortgage or its use. The same in the *Pittman* case, *supra.* They follow the reasoning in *Ambrosini, supra,* that the document must be considered together with its use. The recording of the mortgages was an act or use for official purposes, distinct from the execution of the deed. In all three of them the "election" of the individual put the machinery in motion, but this Court disregards that fact.

Similarly, the deposit of securities in the present case was a purely official use, at least equally a "means" employed by Illinois as the recording was a "means" employed by the Federal Government. *Thomson* v. *Union Pacific R. R.,* 9 Wall. 579; 19 L. Ed. 792. This "use" which transforms an otherwise common transaction into an official and immune one is well shown in the *Stirneman* case, *supra.* In the present case, the State of Illinois must always be one of the parties. *Indian Motocycle, supra.*

If the function is governmental, as must be recognized in this case, the extent of the interference is immaterial and the prohibition is absolute. *Metcalf* v. *Mitchell, supra*; *Indian Motocycle, supra; Gerhardt, supra.*

6. The Court of Claims erred in considering that because these deposits are not within the statutory exemptions, they are subject to Federal taxation.

One of the bases for the decision below is the alleged uniformity of administrative construction of the taxing act and the fact the transactions here involved are not within any of the exceptions in the statute (R. 10).

There is no public record of any prior attempt to apply the statute to transactions such as those involved here. The decision below shows that fact, the law reports and services fail to disclose an instance of it, and the court below was given to understand this was the first case. Since no prior case existed, the doctrine of past construction falls.

As to the statutory exceptions, the exemption here involved existed before there was a Congress. *Ward* v. *Maryland,* 12 Wall. 427. A statutory exemption is futile, for without it the same result would doubtless be reached by judicial construction. *Stirneman* v. *Smith, supra.*

Regulations 71, Art. 35 (r) provide that the tax shall not apply to transfers which result wholly by operation of law. It would appear that under the decision of the Circuit Court of Appeals for the Ninth Circuit in *U. S.* v. *Merchants Nat. Trust & Savings Bank,* 101 Fed. (2d) 399, the deposits and withdrawals here involved would come within this category.

7. The Court of Claims erred in approving an administrative regulation which on its face extends the statute by punctuation and in violation of the legislative intent.

The Bureau construes these deposits and withdrawals as "deliveries" under par. (a) (9) of Schedule A sec. 800, Title VIII of the revenue act of 1926, as set up in Article 120 of Bureau Regulations 71. That article, however, in-

serts in the statutory phrase "memoranda of sales or deliveries" a comma which does not appear in the statute, thus changing it to "memoranda of sales, or deliveries". (Appen., p. 18).

The statutory section as a whole, particularly the provisos; the legislative history and the Regulations otherwise all show the statute intended only to cover *transfers. Senate Finance Report*, No. 665, 72d Cong., 1st Sess., Calendar #705, pp. 12, 47; *Conference Report*, No. 1492, 72d Cong., 1st Sess., H. R. 10236, pp. 25-26 and headings for amendments 226-230.

The 5th proviso of the Federal Statute (Appen., pp. 18-19) specifically provides that:

> "Where the transfer is by delivery of the instrument assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers."

It is clear from this that the form of memorandum prescribed relates only to sales. No other form ever has been prescribed by either the statutes or the regulations which could apply to the deposits involved here. This particular proviso confirms the petitioner's claim that wherever the statute refers to "deliveries", it means transfers perfected by mere delivery.

The "underlying essence" which determines taxability under this statute (*Helvering* v. *Tex-Penn Oil*, 300 U. S. 481, 493; *Bowers* v. *Lawyers Mtg. Co.*, 285 U. S. 182, 188; *U. S.* v. *Phellia*, 257 U. S. 156, 168) is that the "power to command the disposition" of the deposited bonds (*Raybestos-Manhattan, Inc.* v. *U. S.*, 296 U. S. 60, citing *Provost* v. *U. S.*, 269 U. S. 443, 458-9) never left the petitioner here.

The lower court finds (R. 6, par. 6) that no authority exists in Illinois to dispose of the deposited bonds except *back to the petitioner,* unless the latter becomes insolvent. Even in that event, and under secs. 188 and 191, Art. XIII of the Illinois Insurance Code adopted June 29, 1937; and secs. 2-4 of Act of June 26, 1925, as amended May 20, 1929, the State through its attorney general must institute special court proceedings before it gets full title, and that title is not perfected until the order of court (Appen., p. 24).

Conclusion.

It is submitted, therefore, that this case is one calling for the exercise of this Court's powers, that the errors recited may be corrected, the law properly and authoritatively defined, and the judgment of the Court of Claims reversed. To such an end petitioner prays a writ of certiorari be granted.

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Counsel for Petitioner.

APPENDIX.

Federal Statutes.

Title VIII, Revenue Act of 1928 as amended by Title V, Part III, of the Revenue Act of 1932:

Sec. 800. On and after the expiration of thirty days after the enactment of this Act there shall be levied, collected, and paid, for and in respect of the several bonds, debentures or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. The taxes imposed by this section shall, in the case of any article upon which a corresponding stamp tax is now imposed by law, be in lieu of such tax.

Sec. 801. There shall not be taxed under this title any bond, note, or other instrument, issued by the United States, or by any foreign government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power; or any bond of indemnity required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-savings certificate, warrant or check, issued by the United States; or stocks and bonds issued by domestic building and loan associations substantially all the business of which is confined to making loans to members, or by mutual ditch or irrigation companies; or stocks and bonds and other certificates of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in paragraph (12) of section 231.

Schedule A. Title VIII, Revenue Act of 1926 as added by Section 724 (a) of Revenue Act of 1932:

9. Bonds, etc., sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in subdivision 1 and of a kind the issue of which is taxable thereunder, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each $100 of face value or fraction thereof, 4 cents: *Provided,* That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of instruments as collateral security for money loaned thereon, which instruments are not actually sold, nor upon the delivery or transfer for such purpose of instruments so deposited: *Provided further,* That the tax shall not be imposed on deliveries or transfers of bonds in connection with a reorganization (as defined in section 112 of the Revenue Act of 1932) if any of the gain or loss from the exchange or distribution involved in the delivery or transfer is not recognized under the income tax law applicable to the year in which the delivery or transfer is made: *Provided further,* That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That where the change of ownership is by transfer of the instrument the stamp shall be placed upon the instrument; and in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned

in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any such instrument, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both.

Federal Regulations.

Regulations 71 of Commissioner of Internal Revenue:

Art. 120. Basis of tax.—The tax accrues at the time of making the sale or agreement to sell or memorandum of sale, or delivery of, or transfer of the legal title to, the bonds, regardless of the time or manner of the delivery of the bonds or agreement or memorandum of sale. The provisions of articles 34 to 39, both inclusive, of these regulations, relating to sales or transfers of stock, are controlling also in respect of sales or transfers of bonds, in so far as consistent with the provisions of Schedule A-9 and in so far as not inapplicable to the matter of sales or transfers of bonds.

Loans of bonds and the return of bonds loaned are subject to tax.

A bill or memorandum, such as provided in article 36, is required in respect of every sale or transfer of a bearer bond.

Art. 36. Memoranda of sales.—Every person who makes an agreement to sell or transfers title to shares of stock by delivery of certificates assigned in blank, including every person who lends stock, shall, as a part of such transaction, promptly make and deliver to the buyer or borrower a bill

or memorandum of such sale, agreement to sell, or loan, duly signed by the seller or lender or his agent, to which the requisite stamps shall be affixed and canceled, which bill or memorandum shall show the date of the transaction, the names of the seller and buyer, or lender and borrower, and the name and number of shares of stock, and the tax paid thereon, and in the case of a transaction made on an exchange shall bear a number upon the face thereof and have printed or written in ink thereon the words "Subject to the Revenue Act of 1926, as amended, and regulations made in accordance therewith." No more than one such bill or memorandum made by the seller or lender on any given date shall bear the same number. However, no single transaction or purchase or sale that is made upon an exchange by one member to another member shall be required to be evidenced by more than one stamped memorandum.

Illinois Statutes.

Act of April 18, 1899, L. 1899, p. 257; (Smith-Hurd, Ill. Rev. Stat., 1931, ch. 73, sec. 240 (1).)

Sec. 1. Any life insurance company now incorporated or which may hereafter be incorporated under the laws of this State may deposit with the Director of Trade and Commerce in addition to the amount now required and authorized by law to be deposited with him, securities to any amount not less than $10,000, which shall be legally transferred by it to him as Director of Trade and Commerce for the common benefit of all the holders of its registered policies and annuity bonds issued under the provisions of this Act which shall be held by him in trust for the purposes and objects specified herein. Only such investments and loans shall be eligible for deposit as are authorized investments under "An Act to revise the law regulating the investments of the funds and the real estate holdings of life insurance companies," enacted by the Fifty-Eighth General Assembly, *provided, however,* that certificates of purchase acquired by such company through foreclosure proceedings instituted by it upon mortgages in which its funds have been lawfully invested, and duly recorded conveyances of unencumbered

improved real estate lawfully acquired by such company accompanied by satisfactory evidence of ownership thereof, and the Director of Trade and Commerce shall hold the title to such real estate so conveyed to him in trust as aforesaid until other satisfactory securities in lieu thereof have been deposited with him whereupon he shall reconvey the same to such company. The Director of Trade and Commerce may cause such real estate to be valued and the company shall pay the reasonable expenses incurred in such valuation. (As amended by an Act approved July 7, 1933. In effect July 7, 1933. L. 1933, p. 663.)

Sec. 2. After making the deposit mentioned in the preceding section, no company shall issue a policy of insurance or endowment or an annuity bond, unless it shall have upon its face a certificate in the following words: "This policy is registered; and approved securities, equal in value to the legal reserve hereon, are held in trust by this department," which certificate shall be signed by the superintendent and sealed with the seal of his office. Such policies and bonds shall be known as registered policies and annuity bonds, and a duplicate or copy of each kind, class and issue shall be kept in the office of the insurance superintendent. All policies and bonds of each kind and class issued, and the copies thereof filed in the office of the superintendent, shall have imprinted thereon some appropriate designating letter, combination of letters or terms identifying the special form of contract, together with the year of adoption of such form, and whenever any change or modification is made in the form of contracts, policy or bond, the designating letters or terms and year of adoption thereon shall be correspondingly changed.

The superintendent shall prepare and keep such registers hereof as will enable him to compute their value at any time. Upon written proof attested by the president or vice president and secretary of the company which shall have issued such policies or annuity bonds, that any of them have been commuted or terminated, the superintendent shall commute or cancel them upon such register. The net present value of all policies or annuity bonds, according to the standard prescribed in the laws of this State for the valuation of

policies of life insurance companies, when the first premium shall have been paid thereon, less the amount of any liens, (as set forth in a statement showing kind, nature and amount, attested by the president or vice president and secretary of the company issuing the policies against which such liens exist) not exceeding such value as the company may have against such policies or annuity bonds, shall be entered in the register aforesaid at the time such record is made. On the first day of January of each year, or within sixty days thereafter, the superintendent shall cause the registered policies and annuity bonds of each company to be carefully revalued, and the actual value thereof at the time fixed for such valuation, less any liens, (as set forth in a statement showing kind, nature and amount, attested by the president or vice president and secretary of the company issuing the policies against which such liens exist) not exceeding such value as the company may have against such policies or annuity bonds, shall be entered upon the register and the superintendent shall furnish a certificate of the aggregate of such value to the company. It shall be the duty of the superintendent to cancel mutilated policies and annuity bonds, issued by said companies, and register in lieu thereof other policies or bonds of like tenor and date. (As amended by Act approved July 3, 1931. L. 1931, p. 639.)

Sec. 3. Each company which shall have made the deposit herein provided for shall make additional deposits from time to time in amounts of not less than five thousand dollars, and of such securities as are permitted by section 1 of this Act to be deposited so that the market value of the securities deposited shall always be equal to the net value of the registered policies and annuity bonds issued by said company, less such liens (not exceeding such net value) as the company may have against them. So long as any company shall maintain its deposit, as herein prescribed, at an amount equal to or in excess of the net value of its registered policies and annuity bonds as aforesaid, it shall be the duty of the superintendent to sign and affix his seal to the certificates before mentioned on every policy and annuity bond presented to him for that purpose by any company

so depositing. (As amended by Act approved May 23, 1907. L. 1907, p. 360.)

Sec. 4. The superintendent shall keep a careful record of the securities deposited by each company and when furnishing the annual certificates of value mentioned in section two, he shall enter thereon the amount and market value of such securities deposited by such company. If at any time it shall appear from such certificate or otherwise that the value of the securities held on deposit is less than the actual value of the registered policies and annuity bonds issued by such company it shall not be lawful for the superintendent to execute the certificate on any additional policies or annuity bonds of such company until it shall have made good the deficit. If any company shall fail or neglect to make good such deposit for sixty days it shall be deemed to be insolvent and shall be proceeded against in the manner provided by law in such cases.

Sec. 6. Any company depositing under the provisions of this Act may increase its deposits at any time by making additional deposits of not less than five thousand dollars of such securities as are authorized by this Act. Any such company whose deposits exceed the net value of all registered policies and annuity bonds it has in force, less such liens (not exceeding such net value) as the company may hold against them, may withdraw such excess, or it may withdraw any of said securities at any time by depositing others of equal value and of the character authorized by this Act in their stead; and so long as said company shall remain solvent and keep up its deposits, as herein required, it may collect the interest, coupons, rents and other income on the securities deposited as the same accrue. (As amended by Act approved May 23, 1907, p. 360.)

"Illinois Insurance Code" adopted June 29, 1937, effective July 1, 1937.

Sec. 248. Registration of New Policies Prohibited. After the effective date of this Code the Director shall not register any new policies that are issued by any company, nor accept any deposits covering reserves on business thereafter written.

Sec. 250. Additional Deposits. Each company which shall have made the deposit provided for by the act mentioned in section 246, shall make additional deposits from time to time in amounts of not less than five thousand dollars of securities which are authorized investments for life insurance companies under this Code, so that the market value of the securities deposited shall always be equal to the reserve value of the policies heretofore registered by said company, less such liens (not exceeding such net value) as the company may have against them.

Act of June 26, 1925 (L. 1925, p. 446), title amended by Act May 20, 1929 (L. 1929, p. 527) Liquidation of Insurance Companies:

Sec. 2. Whenever any resident company (a) is insolvent * * * or (c) has neglected or refused to observe an order of the director to make good within the time prescribed by law any deficiency, whenever its capital or its reserve, shall have become impaired; * * * then the director shall report any such case to the Attorney General of this State whose duty it shall be to apply forthwith by petition of the director in the name of the People of the State of Illinois to the Circuit Court of the county in which the principal office of such company in this State is located for an order directing such company * * * to show cause why a receiver should not be appointed as hereinafter set forth to take possession of its property and conduct its business, and for such other relief, as the nature of the case and the interests of its policyholders, creditors, members, stockholders or the public may require. (See Sec. 188 of Illinois Insurance Code of 1937, p. 89-90.)

Sec. 3. * * * Upon the appointment and qualification of such receiver as aforesaid, he shall forthwith take possession of the property and conduct the business of such company, and retain such possession and conduct such business until, on the application either of the director, through the Attorney General, or of such company, it shall, after a like hearing, appear to the court that the ground for such order for the appointment for such receiver has been removed and that the company can properly resume posses-

sion of its property and the conduct of its business. (As amended by Act approved May 20, 1929. L. 1929, p. 527.)

Sec. 4. If, on like application and order to show cause, as provided in section two, and after a full hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of such receiver, who may deal with the property and business of such company in his own name as receiver or in the name of such company, as the court may by order direct, and as such receiver shall be vested by operation of law with title to all of the property, contracts and rights of action of such company as of the date of the order so directing liquidation. The filing for record of such order in the office of the recorder of deeds in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted. The rights and liabilities of any such company, and of its creditors, policyholders, stockholders and members, and of all other persons interested in its assets, shall, unless otherwise directed by the court, be fixed as of the date of the entry of the order directing the liquidation of such company.

Sec. 191. (Illinois Insurance Code, 1937, p. 91) Title to Property of company.

The Director and his successor and successors in office shall be vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. The filing or recording of such order in the office of the Recorder of Deeds or the Registrar of Titles in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 931

THE FRANKLIN LIFE INSURANCE COMPANY,
PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion below (R. 8–14) is reported in 37 F. Supp. 155.

JURISDICTION

The judgment of the Court of Claims was entered March 3, 1941 (R. 14). The petition for a writ of certiorari was filed April 8, 1941 (R. 14). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED

1. Whether transfers of securities between an insurance company and the Illinois Director of Insurance, in conjunction with the issuance of "registered" policies under Section 241 of the Illinois insurance laws, are subject to the federal documentary stamp tax.

2. Whether, if the transfers are subject to the stamp tax, the tax is constitutional.

STATUTES INVOLVED

The pertinent federal and state statutes are set forth in the Appendix, *infra,* pp. 8–14.

STATEMENT

The special findings of fact by the court below (R. 4–8) may be summarized as follows:

Petitioner is an insurance corporation organized under the laws of the State of Illinois, with its principal place of business in the City of Springfield, Illinois. Under the laws of Illinois (Smith-Hurd, Ill. Rev. Stats. 1931, c. 73), in force from July 1, 1899, to June 30, 1937, any life insurance company incorporated in Illinois was permitted to deposit securities with the state Director of Insurance equal to the legal reserves on a certain group of policies to be designated "registered" policies (R. 4–5). These policies were then stamped by the Director of Insurance and the following legend placed thereon (R. 5):

> This policy is registered; and approved securities, equal in value to the legal reserve hereon, are held in trust by this department.

While registration was discontinued in Illinois in 1937, the companies with registered policies in force have been required to maintain their deposits (R. 6).

During the period of deposit, depositing companies have the right to withdraw securities and substitute others of equal value and character in their stead and, so long as the depositing company is solvent and keeps up its deposits, it may collect the interest or other income on the deposited securities. No authority exists in the Director of Insurance to dispose of the deposited securities except back to, or at the direction of, the depositing company, except upon insolvency, procedure for which is provided by special statute (R. 6).

Upon insolvency of the insurance company or failure to maintain its deposits as required, the insurance act provides a special procedure under which, after appropriate court order, the Director of Insurance appoints a receiver who operates the company for the benefit of the policyholders (R. 6).

Petitioner elected to issue registered policies and, as a result, has from time to time both deposited securities with and withdrawn securities from the Director of Insurance under the statutes (R. 6). As to unregistered bonds so deposited

petitioner used the following legend stamped across the face of each bond (R. 7):

> This (bond) is the property of and deposited by The Franklin Life Insurance Company, of Springfield, Illinois, with the Director of Insurance of the State of Illinois, and held by him in trust for the benefit and security of the members, policyholders, or creditors of the said The Franklin Life Insurance Company, as required by and pursuant to the laws of the State of Illinois. It is not negotiable or transferable until withdrawn from said trust, at which time it shall be endorsed by the Director of Insurance.

When securities were withdrawn, the following form of endorsement was used by the Director of Insurance (R. 7):

> Withdrawn from above trust this — day of ——, A. D. 19—. Without recourse on me.
>
> ——— ———, as Director of Insurance of the State of Illinois.

Prior to October 1939 neither the petitioner nor the State of Illinois purchased or used federal documentary transfer stamps under Schedule A–9 of Title VIII of the Revenue Act of 1926, as added by Section 724 (a) of the Revenue Act of 1932. On October 2, 1939, the Collector of Internal Revenue at Springfield, Illinois, required petitioner to purchase documentary stamps to

cover deposits and withdrawals during the period from January 14, 1936, to August 8, 1939. The deposits during the period totaled $5,443,000, and the withdrawals totaled $1,162,000. The stamps thereon amounted to $2,177.20 and $564.80, respectively, or a total of $2,742 (R. 7).

On November 3, 1939, petitioner filed a claim for refund in the amount of $2,742, which was rejected by the Commisisoner of Internal Revenue on November 20, 1939 (R. 7–8). Petitioner thereupon instituted the present suit in the Court of Claims (R. 1). That court dismissed the petition and entered judgment for the United States (R. 14).

ARGUMENT

The court below held, first, that the stamp tax was applicable to the transfers between petitioner and the Director of Insurance, and second, that collection of the tax from petitioner did not impose an unconstitutional burden on the State of Illinois. Neither ruling involves a conflict of decisions or presents a question of general importance and both are patently correct.

1. Schedule A–9 of Title VIII of the Revenue Act of 1926, as added by Section 724 (a) of the Revenue Act of 1932 (*infra,* p. 8), provides for the imposition of the stamp tax on all "sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to" securities of the type here involved. It is clear that under

this provision the transfer of the bare legal title to a security is taxable, even though the transferee acquires no beneficial interest in the security transferred. *Provost* v. *United States,* 269 U. S. 443; *Founders General Co.* v. *Hoey,* 300 U. S. 268, 274. Here there was concededly a transfer of the legal title to the bonds; indeed Section 240 of the Illinois insurance laws (*infra,* pp. 10–11) requires that the securities "shall be legally transferred" by the insurance company to the Director of Insurance and "shall be held by him in trust * * *." Under the decisions cited, therefore, the transfers were plainly taxable.

2. It is equally plain that the tax, so applied, does not impose an unconstitutional burden on the State of Illinois, both because the state's participation in the permissive registration of the policies is not an essential governmental function and because the collection of the tax from the petitioner did not impose any burden on the state.

(a) The court below, after considering the nature of the permissive registration plan, concluded (R. 13): "Altogether it seems that the plan was devised rather in the interest of home insurance companies than of the public." This conclusion is, we believe, amply warranted. Not only was the registration of policies optional with the insurance companies, but it was available only for domestic companies. Manifestly, a statute which is not only permissive so far as domestic

insurance companies are concerned, but which also excludes all foreign insurance companies doing business within the state, is not an exercise of the police power of the state for the protection of its citizens. Consequently, the participation of the state in the registration plan is outside the scope of its essential governmental functions.

(b) It is equally clear that the collection of the stamp tax from petitioner imposed no burden, economic or otherwise, upon the state. Petitioner's argument, in effect, is that a tax imposed on a transaction to which the state is a party is unconstitutional. The decisions of this Court establish the contrary. *Helvering* v. *Gerhardt,* 304 U. S. 405; *Graves* v. *New York ex rel. O'Keefe,* 306 U. S. 466; *Allen* v. *Regents,* 304 U. S. 439; *James* v. *Dravo Contracting Co.,* 302 U. S. 134.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
RICHARD H. DEMUTH,
HUBERT L. WILL,
Special Assistants to the Attorney General.

MAY 1941.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 800. On and after the expiration of thirty days after the enactment of this Act there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. * * * [U. S. C., Title 26, Secs. 900, 908.]

Schedule A–9 of Title VIII of the Revenue Act of 1926, as added by Section 724 of the Revenue Act of 1932, c. 209, 47 Stat. 169:

> SEC. 724. STAMP TAX ON TRANSFER OF BONDS, ETC.
>
> (a) Schedule A of Title VIII of the Revenue Act of 1926 is amended by adding at the end thereof a new subdivision to read as follows:
>
> "9. Bonds, etc., sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or

described in subdivision 1 and of a kind the issue of which is taxable thereunder, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each $100 of face value or fraction thereof, 4 cents: *Provided,* That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of instruments as collateral security for money loaned thereon, which instruments are not actually sold, nor upon the delivery or transfer for such purpose of instruments so deposited: *Provided further,* That the tax shall not be imposed on deliveries or transfers of bonds in connection with a reorganization (as defined in section 112 of the Revenue Act of 1932) if any of the gain or loss from the exchange or distribution involved in the delivery or transfer is not recognized under the income tax law applicable to the year in which the delivery or transfer is made: *Provided further,* That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall

be accompanied by a certificate setting forth the facts: *Provided further,* That where the change of ownership is by transfer of the instrument the stamp shall be placed upon the instrument; and in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any such instrument, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both."

(b) Subsection (a) shall take effect on the fifteenth day after the date of the enactment of this Act.

(c) Subdivision 9 of Schedule A of Title VIII of the Revenue Act of 1926, added to such schedule by subsection (a) of this section, is repealed effective July 1, 1934.

Smith-Hurd, Illinois Revised Statutes (1931), c. 73:

240. *Additional deposit with superintendent.*] Sec. 1. *Be it enacted by the*

People of the State of Illinois, represented in the General Assembly: That any life insurance company now incorporated or which may hereafter be incorporated under the laws of this state may deposit with the Insurance Superintendent in addition to the amount now required and authorized by law to be deposited with him, securities to any amount not less than $10,000, which shall be legally transferred by it to him as Insurance Superintendent for the common benefit of all the holders of its registered policies and annuity bonds issued under the provisions of this act which shall be held by him in trust for the purposes and objects specified herein. Such securities may include in addition to those authorized by law to be deposited with him under the provisions of "An Act to organize and regulate the business of life insurance," approved March 26, 1869, in force July 1, 1869, certificates of deposit issued by any national bank or any bank or trust company organized under the laws of this state, and certificates of purchase acquired by such company through foreclosure proceedings instituted by it upon mortgages in which its funds have been lawfully invested, and duly recorded conveyances of unincumbered improved real estate lawfully acquired by such company accompanied by satisfactory evidence of ownership thereof, and the Insurance Superintendent shall hold the title to such real estate so conveyed to him in trust as aforesaid until other satisfactory securities in lieu thereof have been deposited with him, whereupon he shall reconvey the same to such company.

The Insurance Superintendent may cause such real estate to be valued and the com-

pany shall pay the reasonable expenses incurred in such valuation. [As amended by act approved May 23, 1907. L. 1907, p. 360.]

241 *Policies registered—Annuity bonds—Duty of superintendent.*] SEC. 2. After making the deposit mentioned in the preceding section, no company shall issue a policy of insurance or endowment or an annuity bond, unless it shall have upon its face a certificate in the following words: "This policy is registered, and approved securities, equal in value to the legal reserve hereon, are held in trust by this department," which certificate shall be signed by the Superintendent and sealed with the seal of his office. Such policies and bonds shall be known as registered policies and annuity bonds, and a duplicate or copy of each kind, class and issue shall be kept in the office of the Insurance Superintendent. * * *

* * * * *

242. *Additional deposits.*] Sec. 3. Each company which shall have made the deposit herein provided for shall make additional deposits from time to time in amounts of not less than five thousand dollars, and of such securities as are permitted by section 1 of this act to be deposited so that the market value of the securities deposited shall always be equal to the net value of the registered policies and annuity bonds issued by said company, less such liens (not exceeding such net value) as the company may have against them.

So long as any company shall maintain its deposit, as herein prescribed, at an amount equal to or in excess of the net

value of its registered policies and annuity bonds as aforesaid, it shall be the duty of the Superintendent to sign and affix his seal to the certificates beforementioned on every policy and annuity bond presented to him for that purpose by any company so depositing. [As amended by act approved May 23, 1907. L. 1907, p. 360.]

* * * * *

245. *Increasing deposits—Withdrawing securities—collecting interest.*] SEC. 6. * * * Any such company whose deposits exceed the net value of all registered policies and annuity bonds it has in force, less such liens (not exceeding such net value) as the company may hold against them, may withdraw such excess, or it may withdraw any of said securities at any time by depositing others of equal value and of the character authorized by this act in their stead; and so long as said company shall remain solvent and keep up its deposits, as herein required, it may collect the interest, coupons, rents and other income on the securities deposited as the same accrue. * * *

* * * * *

247. *Proceedings against insolvent company.*] SEC. 8. If at any time the affairs of any life insurance company which has deposited securities under the provisions of this act shall, in the opinion of the Superintendent, appear in such condition as to render the issuing of additional policies and annuity bonds by such company injurious to the public interest, the Superintendent may take such proceedings against such company as may be authorized by law to be taken against other insolvent companies, and said companies shall in all respects be subject to the provisions of law affecting other companies.

248. *Fees.*] SEC. 9. Every company making deposits under the provisions of this act shall pay to the Superintendent for each certificate on registered policies or annuity bonds, including seal, a fee of fifty cents: *Provided*, that for each certificate, including seal, issued in accordance with the provisions of section five of this act, the fee shall be twenty-five cents.

* * * * *

250. *Discontinuance of deposit and registration of policy.*] SEC. 11. Any company making deposits and registering its policies and annuity bonds pursuant to this Act may, through action by its board of directors or other governing body corresponding thereto, at any time when the insurance under its registered policies in force exceeds twenty million dollars ($20,000,000), cease to register its policies and annuity bonds issued subsequent to the completion of the steps herein required and cease to deposit the reserves thereon. * * *

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1941